Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

TRANS-PHILIPPINES INVESTMENT CORPORATION,
Petitioner,

– versus –

C.T.A. CASE NO. 4678

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 02 1995

x - x

D E C I S I O N

This case involves a claim for refund in the amount of ₱750,468.66 representing alleged creditable withholding taxes on management fees and rent income for the calendar year ended December 31, 1989.

Petitioner, Trans-Philippines Investment Corporation is a domestic corporation duly organized and existing under Philippine laws with principal office in Makati, Metro Manila.

On April 15, 1990, petitioner filed its Income Tax Return for 1989 with Revenue District 32-A 1 West Makati, declaring a net loss in the amount of ₱32, 974,004.00. Petitioner allegedly was in a loss position in its operations during the taxable year 1989, as a result of this, it was not able to utilize its creditable withholding taxes on management fees and rent income in the total amount of ₱750,468.66. The details of the creditable expanded withholding taxes withheld by various parties from their income payments to petitioner during taxable year 1989, are as follows:

M A N A G E M E N T   F E E S

Withholding Agents	AGP Industrial Corporation	Royal Undergarments Corporation	RUC Textile Division	Total
CY 1989				
Management Fee Income per ITR Adjustments:	429,502.12	12,038,839.05	31,663.25	12,500,004.42
- Mgt. fee for 1989 w/tax for which was remitted in 1988	(199,892.32)			(199,892.32)
- Mgt. fee for 1988, w/tax for which was remitted in 1989		109,091.15	2,170.44	111,261.59
Per Certificate of Creditable Income Tax Withheld At Source (1743.1)	229,609.80	12,147,930.20	33,833.69	12,411,373.69
5% Tax Withheld-Per Certificate of Creditable Income Tax Withheld at Source (1743.1)	11,480.49	607,396.49	1,691.68	620,568.66

LEASE ON REAL PROPERTY

Withholding Agents	AG & P-AMSCO Foundry Inc.	Artefacts Inc.	RUC Textile Division	Total
CY 1989				
Rent Income per ITR	2,400,000.00	48,000.00	150,000.00	2,598,000.00
Per Certificate of Creditable Income Tax Withheld at Source (1743.1)	2,400,000.00	48,000.00	150,000.00	2,598,000.00
5% Tax Withheld-Per Certificate of Creditable Income Tax Withheld at Source (1743.1)	120,000.00	2,400.00	7,500.00	129,900.00

Subsequently, petitioner filed on October 3, 1991, a written claim for refund or tax credit of ₱750,468.66 with respondent representing unutilize tax credits as of December 31, 1989.

On December 18, 1991, there being no action on the claim for refund or tax credit, petitioner filed this petition for review as a way of tolling the two (2) year prescriptive period set by law.

Respondent alleged as special and affirmative defenses the following:

> 1. that the present petition is premature because the claim for refund of petitioner is still pending investigation and consideration before the office of respondent and that no decision has as yet been rendered on petitioner's claim for refund.
>
> 2. petitioner likewise failed to show that it had strictly complied with the requirements of Section 204 of the Tax Code in relation to Section 230 thereof.
>
> 3. the burden is imposed on petitioner to show compliance with these requirements since a claim for refund and or tax credit partake of the nature of tax exemption which is construed strictly against the claimant.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit of the amount of ₱750,468.66 representing erroneously paid or unutilized creditable withholding taxes for taxable year 1989.

Petitioner in support of its claim presented in evidence the Corporate Annual Income Tax Return (Exh. "B"), the Certificate of Creditable Income Tax Withheld at Source - BIR Form 1743.1 (Exh. "I") and the claim for refund with the Bureau of Internal Revenue (Exh. "K").

Record shows that respondent failed to file his comment on petitioner's offer of evidence within the time given the Court. Likewise, neither memorandum nor material evidence was ever filed by herein respondent in support of his case.

It can very well be concluded that respondent is not questioning seriously petitioners right to the claim for refund. Respondent failed to controvert his opponent's claim and lacks material evidence to support his contention.

A cursory examination of the records of the case, particularly petitioners income tax return reveals the following computation:

Withholding Agent	Exh.	INCOME Mgt. Fee	Rental	Tax Withheld
AGP Industrial Corporation	E	229,609.80		11,480.49
Royal Undergarment Corp.	F	12,147,929.83		607,396.49
Royal Undergament-Textile	G	33,833.69		1,691.68
AG & P-AMSCO Foundry Inc.	H-1		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-2		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-3		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-4		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-5		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-6		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-7		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-8		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-9		200,000.00	10,000.00
AG & P-AMSCO Foundry Inc.	H-10			
Artecrafts, Inc.	I		48,000.00	2,400.00
Royal Undergament-Textile	J		150,000.00	7,500.00
TOTAL		₱ 12,411,373.32	₱ 2,198,000.00	₱730,468.66

Clearly, petitioner was able to satisfy the three basic requirements in claims for a refund of overpaid creditable withholding tax to wit:

1. filing of a claim within the two-year period prescribed under Sec. 230 of the NIRC.

2. the income upon which the taxes were withheld were included in the return of the recipient; and

3. the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor to the payee. (*Phil. American Life Insurance Co. vs. Comm. of Internal Revenue,* CTA Case No. 4018, Sept. 16, 1991)

Likewise, petitioner was able to show that the said refundable amount was not credited to subsequent year because for taxable year 1990 (Exh " L") petitioner also incurred losses.

Based on the requirements set forth by law, undeniably petitioner was able to substantiate his claim by way of material evidence. At this point, there is nothing left for the Court but to give affordable relief in petitioners favor. (*Citytrust Finance Corporation* [Formerly Investors Finance Corporation] *FNCB Finance vs. Comm. of Internal Revenue, CTA Case No. 4046,* **supra**; *Commonwealth Pacific Consultants Ltd. vs. Comm. of Internal Revenue,* C.T.A. Case No. 2953, May 15, 1982; *Comm. of Internal Revenue vs. The Philippine American Life Insurance Co. and The Court of Tax Appeals, CA - G.R. SP. No. 2953, March 26, 1992; Filipinas Management & Leasing Services Corporation vs. Comm. of Internal Revenue,* C.T.A. Case No. 4146, March 11, 1994)

WHEREFORE, in view of all the foregoing respondent is hereby ordered to refund or issue tax credit in favor of petitioner Trans-Philippines Investment Corporation the sum of ₱730,468.66 representing excess creditable withholding taxes paid for the calendar year 1989.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals